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IN THE

Supreme Court of The United States

October Term, 1981

No. _____

GRANT-OLIVER CORPORATION,
TRANS WORLD AIRLINES, INC., USAIR, INC., et al.,
Appellants

v.

MOON AREA SCHOOL DISTRICT,
Appellee

ON APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA

JURISDICTIONAL STATEMENT

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September 25, 1982

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QUESTIONS PRESENTED

1. Whether a School District's 15 percent patron parking tax which falls almost exclusively on interstate travelers who are non-residents of the School District and who receive no services or benefits from the School District is invalid because it imposes a constitutionally impermissible burden on the right to travel.

2. Whether the parking tax violates the Interstate Commerce Clause and the Due Process Clause of the Fourteenth Amendment to the United States Constitution because the tax discriminates against interstate commerce and because the School District provides no services or benefits to non-resident parking patrons who are traveling in interstate commerce and who are almost exclusively the subject of the tax.

PARTIES TO THE PROCEEDING

James E. Tricco, James A. Divis, M. Ralph Mura, Robert M. Gunter, Mary Ellen Andrew, Lorraine F. McCarthy, Linda Puhala, Edward A. Ferrari, Louise Bertig, Janine R. Cater, Diane Pusateri, Ann Cantebury, Leo J. Eckerle, Michael Kontra, John Fiore, E. J. Magneuson, R. U. Moorman, Wayne Barr, M. D. Houser, A. S. Acri, Glenn Hardin, Henry Rougier, Rachella Palaio, Arthur Cox, Robert Biem, Charles Bower, G. Donald Hansbury, George E. Long, Charles Ebner, William C. Dowling, Grant-Oliver Corporation, USAir, Inc., and Trans World Airlines, Inc., Appellants,

The following corporations are subsidiaries of Trans World Airlines, Inc.:

Canteen Corporation, Century 21 Real Estate Corporation, Hilton International Co., and Spartan Food Systems, Inc.

Moon Area School District, Appellee.

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CITATIONS

CASES:

Complete Auto Transit v. Brady, 430 U.S. 274, 97 S. Ct. 1076, 51 L.Ed. 326 (1977) 5, 7, 8

Commonwealth Edison v. Montana, 453, U.S. 609, 101 S. Ct. 2946 (1982) 7, 8, 9

Crandall v. Nevada, 73 U.S. (6 Wall.) 35 18 L.Ed. 744 (1868) 6

Evansville-Vanderburgh Airport v. Delta Airlines, 405 U.S. 707, 92 S.Ct. 1349, 31 L.Ed. 2d 620 (1972) 5, 6, 7

State v. Cochise Airlines, 128 Ariz. 432, 626 P. 2d 596 (1980) 7

Wisconsin v. J. C. Penney Co., 311 U.S. 435, 61 S.Ct. 246, 85 L.Ed. 267 (1940) 7, 8

OPINIONS BELOW

The opinion of the Supreme Court of Pennsylvania is reported at 446 A.2d 234 (1982). The opinion of the Commonwealth Court of Pennsylvania is reported at 428 A.2d 1028 (1981) and the opinion of the Court of Common Pleas of Allegheny County, Pennsylvania is reported at 127 P.L.J. 253 (1979). Each of the foregoing opinions is reproduced in full in the appendix hereto.

BASIS FOR JURISDICTION

The judgment of the Supreme Court of Pennsylvania was entered on May 28, 1982. That judgment reversed the unanimous judgment of the Commonwealth Court of Pennsylvania affirming the Court of Common Pleas of Pennsylvania, which had held that a 15 percent patron parking tax imposed by the Moon Area School District was a constitutionally impermissible burden on the right to travel and on interstate commerce and was also violative of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

A notice of appeal to this Court was filed in the Supreme Court of Pennsylvania on August 5, 1982. On August 9, 1982, Mr. Justice Brennan entered an order extending until September 25, 1982, the time for docketing an appeal in this matter.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257 (2).

CONSTITUTIONAL PROVISIONS

United States Constitution Article I, Section 8, Clause 3.

> To regulate commerce with foreign nations, and among the several States, and with the Indian tribes.

Fourteenth Amendment to United States Constitution Section 1.

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Moon Area School District Resolution 79-2 is reproduced in its entirety in Appendix F of this Jurisdictional Statement.

STATEMENT OF THE CASE

This is an appeal by Grant-Oliver Corporation, Trans World Airlines, Inc., USAir, Inc., 26 resident taxpayers of the Moon Area School District, and 4 non-resident taxpayers of the Moon Area School District. The appeal is from the judgment of the Supreme Court of Pennsylvania which reversed the unanimous judgment of the Commonwealth Court of Pennsylvania and upheld the constitutional validity of a 15 percent patron parking tax which was adopted by the Moon Area School District (the "School District") on March 26, 1979 and which was to be effective as of April 25, 1979.[1]

The tax falls with incidental exception, on parking patrons: who were traveling to and from the Greater Pittsburgh International Airport; who were not residents of the School District; and who were traveling in air commerce of which at least 88.5 percent was interstate and international air commerce. (App. 15a.)[2]

Specifically, the tax is a 15 percent patron parking tax on persons entering into parking transactions in commercial parking lots within the School District. There are six such commercial parking lots within the School District. The largest of these lots is located on property owned by Allegheny County, Pennsylvania within the boundaries of the Greater Pittsburgh International Airport and is operated by appellant, Grant-Oliver Corporation. The remaining five parking lots are adjacent to the Airport. Parking in these lots is a part of the flow of or

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1. The Commonwealth Court of Pennsylvania is an intermediate appellate court having jurisdiction of appeals over actions arising, inter alia, under local tax ordinances and resolutions. 42 Pa. C.S.A. §762.

2. "App." references are to the Appendix to the jurisdictional statement.

connected with interstate commerce and the parking lots are economically dependent upon the patronage of interstate travelers traveling to and from the Airport and in furtherance of air commerce. (App. 6a, 15a-16a.)

As noted in the recitals to the Tax Resolution, the receipts from the tax are to be used solely for the School District's general revenue purposes. The School District expends no funds for normal municipal services such as highway and road maintenance, police and fire protection and other similar services.[3] Rather, those services are provided by the Township in whose borders the parking lots lie. Thus, there was no evidence presented as to any benefit, other than the general availability of athletic facilities, that the School District confers on interstate travelers or parking patrons. (App. 28a-29a.)

The adoption of the tax was challenged by the appellants herein and others who filed a statutory appeal from the tax on April 16, 1979, pursuant to Section 6906 of Pennsylvania's Local Tax Enabling Act, Act. No. 511 of 1965, P.L. 1257, 53 Pa. Stat. Ann. Sec. 6901 et seq., in which they asserted the unconstitutionality of the tax.

The Court of Common Pleas held that the tax was invalid (1) because it would violate the Commerce Clause, Article 1, Sec. 8, cl. 3 of the United States Constitution and would impermissibly burden the right to travel interstate free of taxation; (2) because it would violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the Due Process Clause of the Pennsylvania Constitution;

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3. The Pennsylvania Supreme Court makes reference to the fact that the School District's athletic facilities are open to the general public. The School District submitted no evidence to show that any of these facilities were ever used by non-resident, interstate travelers.

and (3) because it would be excessive and unreasonable in violation of Section 6908(4) of the Local Tax Enabling Act, *supra*. Accordingly, the Court of Common Pleas enjoined the School District from enforcing the parking tax.

The School District appealed to the Commonwealth Court of Pennsylvania which affirmed the lower court's order in a unanimous opinion adopting as its own the opinion of the Court of Common Pleas.

The Pennsylvania Supreme Court reversed the holding that the tax does not violate the Commerce Clause or the Due Process Clause of the United States Constitution. Appellants timely filed with the Pennsylvania Supreme Court a Notice of Appeal to this Court.

THE QUESTIONS ARE SUBSTANTIAL

This case concerns the Constitutional validity of a tax which is aimed at and falls almost exclusively on non-residents of a School District who are traveling in interstate commerce and who receive no services, benefits or protection from the School District which imposes the tax. The Pennsylvania Supreme Court held that the tax does not violate either the Commerce Clause of the Constitution or the Due Process Clause of the Fourteenth Amendment to the Constitution. The holding that the tax does not impose a constitutionally impermissible burden on the right to travel and on interstate commerce, is in conflict with this Court's decision in *Evansville-Vanderburgh Airport v. Delta Airlines*, 405 U.S. 707 and with the well established principle that a tax cannot be aimed solely at those who receive no benefits from the taxing jurisdiction. See *Complete Auto Transit v. Brady*, 430 U.S. 274.

The Court of Common Pleas of Allegheny County and a unanimous Commonwealth Court of Pennsylvania recognized that this Court's decision in *Evansville* is controlling. Under the test set forth in *Evansville*, a tax imposed on persons traveling in interstate commerce will be sustained only if the tax is designed to make interstate travelers bear a fair share of the cost of providing the public facilities that further such travel. Furthermore, a tax on those traveling in interstate commerce will only be sustained if it is not "excessive in comparison with the governmental benefit conferred." 405 U.S. at 717. Accordingly, the lower Pennsylvania courts struck down the parking tax because the tax is a direct burden on persons traveling in interstate commerce and because the School District provides no facilities for and makes no contributions to aid in such travel. (App. 28a-29a.)

The importance of the right to travel without a burden of excessive taxation was recognized by this Court over a century ago in *Crandall v. Nevada*, 73 U.S. (6 Wall.) 35 where it held that a tax levied on each person leaving the state of Nevada by railroad, stage coach or other vehicle for hire impermissibly burdened the constitutionally protected right to travel *regardless of the amount of the tax.* Congress' concern that citizens be permitted to travel between states without being subject to taxation is reflected in Section 1113 of the Federal Aviation Act, 49 U.S.C. Sec. 1513 which prohibits states and political subdivisions thereof from levying or collecting "a tax, fee, head charge or other charge directly or *indirectly* on persons traveling in air commerce." (Emphasis supplied.) Congress was moved to adopt this provision because taxes such as those here and those allowed in *Evansville* "cut against the grain of the traditional American right to travel among the States *unburdened* by travel taxes." (Emphasis supplied.) Senate Report No. 93-12, 1973 U.S. Code Cong. & Adm. News

p. 1434, 1446. Accord, *State v. Cochise Airlines*, 128 Ariz. 432.[4]

Notwithstanding the long held views of Congress and the courts with respect to taxes on travel, the Pennsylvania Supreme Court reversed the lower courts and upheld the parking tax because it concluded that the tax is not a tax on the right to travel. The Pennsylvania court did not explain how it reached this conclusion, but it cannot be doubted that in reaching this conclusion it ignored the fact that the tax is aimed at and falls almost exclusively on non-residents of the School District. This is so because the only public parking lots in the School District are those which have an "interlocking" relationship with the Airport. (App. 6a, 15a.) Thus, regardless of the language in which the tax resolution is couched, as a practical matter, the tax is on those entering into air travel.

The Pennsylvania Supreme Court's holding also conflicts with this Court's holding in *Complete Auto Transit v. Brady*, 430 U.S. 274 and *Commonwealth Edison v. Montana*, 453 U.S. 609 and with the well-established constitutional principle that a tax must be reasonably related to the benefit conferred by a taxing jurisdiction in order not to be in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *Wisconsin v. J. C. Penney Co.*, 311 U.S. 435.

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4. In *Evansville* the Court sustained a head tax on commercial airline passengers because the tax was fair compensation for services and facilities rendered to facilitate travel in interstate commerce. Section 1113 of the Federal Aviation Act was enacted in response to the decision in *Evansville*.

Complete Auto Transit set forth the test that a tax on interstate commerce, as opposed to interstate travel, must meet in order to pass constitutional muster. That test states that a tax will be constitutionally valid if it "is applied to an activity with a substantial nexus with the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to services provided by the State." 430 U.S. at 279. This Court noted in *Commonwealth Edison* that the fourth prong of the test is akin to the test set forth in *Wisconsin v. J. C. Penney Co., supra*, "whether the state has given anything for which it can ask return." 101 S.Ct. at 2958.

The Pennsylvania Supreme Court held that the tax meets the fourth prong of the *Complete Auto Transit* test because the measure of the tax relates to taxpayer's presence or activities in the School District—that is the tax is a percentage of the fee charged for parking. It also stated that the Due Process test and the related test of Complete Auto Transit are met because:

> The activity of parking within the school district in order to have easy access to the airport, as well as the availability to the public of the school district's recreational facilities are more than sufficient personal benefits which concretize the necessary general benefit of participating in an orderly and civilized society.

In *Commonwealth Edison* this Court stated that when a tax is assessed in proportion to a taxpayer's activities "the taxpayer is shouldering its fair share of supporting the State's provision of police and fire protection, the benefit of a trained work force and 'the advantages of a civilized society.'" 101 S.Ct. at 2960.

The implicit assumption in the Pennsylvania Supreme Court's reasoning was that although the School District itself might not provide any services, benefits or protection to those who are subject to the tax, the Commonwealth of Pennsylvania has delegated to the School District the responsibility to provide for public education and has seen fit to delegate some portion of its taxing power.

The flaw in this reasoning is that the only taxing power which the State could delegate is the power to impose a general tax on all taxpayers. The State does not have the constitutional power to impose itself or to delegate the power to impose a tax which discriminates against interstate commerce or those who are traveling in interstate commerce.

Simply put Pennsylvania can not constitutionally delegate to a School District the authority to impose a tax falling almost exclusively on those persons traveling in interstate commerce, particularly when that tax bears no reasonable relationship to the benefits conferred by the School District. *Commonwealth Edition, supra.*

CONCLUSION

For the foregoing reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that service of the foregoing Jurisdictional Statement has been made on this __ day of September, 1982 by delivering three copies thereof to the offices of the following attorneys, who are counsel for all parties required to be served:

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